

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 19, 2000 appellant, then a 43-year-old crane operator, sustained employment-related left shoulder and cervical strains when he was struck by a chain at work. The Office accepted degeneration of a cervical intervertebral disc, cervical region postlaminectomy syndrome and closed dislocation of multiple cervical vertebrae. On May 20, 2002 appellant underwent cervical discectomy and fusion from C5 to 7. He stopped work and was placed on the periodic rolls. Appellant has additional claims accepted for open wound of the left hand, bilateral sensorineural hearing loss, bilateral plantar fasciitis and contact dermatitis.²

In letters dated March 3, 2003, March 1, 2004, March 3 and April 15, 2005 and March 3, 2006, the Office requested that appellant complete Office Form CA-1032.³ Appellant was asked to report earnings from employment or self-employment and was informed that the statement covered the prior 15 months. The form noted:

“Warning: A false or evasive answer to any question or the omission of an answer, may be grounds for forfeiting your compensation benefits and subject you to civil liability. A fraudulent answer may result in criminal prosecution. All statements are subject to investigation for verification.”

Appellant submitted 1032 forms and reported no earnings or employment activity. The forms were signed by him on March 24, 2003,⁴ March 4, 2004, March 5 and 11 and April 21, 2005 and March 13, 2006. On November 21, 2006 appellant elected benefits under the civil service retirement system (CSRS), effective January 1, 2007. On December 4, 2006 he elected CSRS effective that day.

On December 14, 2006 the Office again requested that appellant complete an Office 1032 form and was given the appropriate warning. In a December 18, 2006 letter, appellant informed the Office that, as he had elected disability retirement effective December 4, 2006, “I am not tied to compensation as of that date ... and don’t wish to deal with the paper work anymore.” He did not return a completed 1032 form.

By decision dated February 26, 2007, appellant was granted a schedule award for a five percent left upper extremity impairment. On September 18, 2007 a schedule award for a 40 percent binaural hearing loss was issued.⁵

In an indictment dated December 4, 2007, appellant and his wife were charged with one count of conspiracy to commit fraud to obtain federal employees’ compensation in violation of

² These claims were adjudicated under separate Office file numbers and were doubled into the instant claim on June 30, 2009.

³ The forms are identified as both CA-1032 and EN1032, which are essentially the same and are required for employees receiving compensation under the Act.

⁴ On the CA-1032 form signed on March 24, 2003 appellant reported that he worked for the employing establishment until May 20, 2002 when he had surgery.

⁵ *Supra* note 1.

18 U.S.C. § 371, four counts of false statement or fraud to obtain federal employees' compensation in violation of 18 U.S.C. § 1920 and four counts of mail fraud in violation of 18 U.S.C. § 1341.⁶ The indictment noted that he performed work activities and acted as an employee with a private, family-owned company, Thompson Welding, from about June 2002 through December 2006 yet continued to receive disability compensation during that time period. A superseding indictment with an additional charge of criminal forfeiture under 18 U.S.C. § 982 was issued on May 13, 2008.

By decision dated May 14, 2008, appellant was granted schedule awards for a 13 percent impairment of the right leg and a 9 percent impairment on the left leg. On June 7, 2008 he filed a schedule award claim in the instant case and in a July 30, 2008 decision, the Office denied the claim for a schedule award on the grounds that he had not sustained impairment to a scheduled member.

On February 2, 2009 appellant entered a guilty plea to count eight of the indictment, falsifying a 1032 form mailed to the Office on April 21, 2005 in an attempt to commit fraud and obtain federal workers' compensation. A U.S. District Court for the Eastern District of Texas Amended Judgment in a Criminal Case dated May 18, 2009 advised that he entered a guilty plea to count eight of the indictment under 18 U.S.C. § 1341 for mail fraud, by mailing a 1032 form to the Office on April 21, 2005, the date the offense ended. Restitution of \$134,537.05 to the Department of Labor was ordered.⁷

By decision dated June 24, 2009, the Office found that appellant forfeited his right to further compensation pursuant to section 8106(b) of the Act because he knowingly failed to report earnings on Office CA-1032 forms and pled guilty to mail fraud regarding the filing of the forms. It noted that the CA-1032 forms covered the period through March 13, 2008, but because he continued to work in private business after that date and knowingly failed to report earnings previously, the entire period for which he received wage-loss compensation was forfeited. On June 24, 2009 the Office also made a preliminary determination that appellant received an overpayment in compensation in the amount of \$134,589.12 because the compensation he received for the period May 20, 2002 through December 3, 2006 was declared forfeited and found him at fault because he made an incorrect statement as to a material fact, failed to provide information and accepted payments which he should have known were incorrect.

On June 29, 2009 appellant requested reconsideration of the July 30, 2008 decision denying a schedule award. He also requested a prerecoupment hearing of the June 24, 2009 preliminary overpayment finding and an oral hearing of the June 24, 2009 decision finding that he forfeited compensation.

By decision dated July 15, 2009, the Office stated that it was denying appellant's request for reconsideration of the July 30, 2008 decision. It found that as he pled guilty to mail fraud in connection with submitting fraudulent CA-1032 forms to the Office, pursuant to section 8148(a)

⁶ Appellant and his wife were also charged with five counts of insurance fraud.

⁷ Restitution of \$64,301.75 to Combined Insurance Company of America was also ordered.

of the Act, he was not entitled to further benefits under the Act, including schedule award compensation.⁸

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of the Act provides that the Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. It states that an employee who:

“(1) fails to make an affidavit or report when required; or

“(2) knowingly omits or understates any part of his or her earnings forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.”⁹

Section 10.5(g) of the Office’s regulations defines earnings from employment or self-employment as follows:

“(1) Gross earnings or wages before any deduction and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

“(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual’s responsibility to report the estimated cost to have someone else perform his or her duties.”¹⁰

In order to establish that a compensationeer should forfeit the compensation received for the periods covered by completed Office CA-1032 forms, the evidence must establish that he or she knowingly omitted or understated his or her employment and earnings.¹¹ As forfeiture is a penalty, it is not enough merely to establish that there were underreported earnings from employment. The inquiry is whether appellant knowingly omitted or understated his earnings from employment for the periods covered by the CA-1032 forms. The term knowingly is not defined within the Act or its implementing federal regulations. In common usage, the Board has adopted the definition of “knowingly” as “with knowledge; consciously; intelligently; willfully; intentionally.”¹² The language on Office CA-1032 forms is clear and unambiguous in requiring

⁸ Although the Office July 15, 2009 decision indicated on its face that it was not a review of the merits of appellant’s claim, perusal of this decision establishes that it did in fact constitute a merit review as the decision evaluated a new issue of whether he forfeited further compensation, including schedule award compensation, following his February 2, 2009 guilty plea.

⁹ 5 U.S.C. § 8106(b); *see F.C.*, 59 ECAB ____ (Docket No. 07-1541, issued November 16, 2007).

¹⁰ 20 C.F.R. § 10.5(g).

¹¹ *Robert R. Holmes*, 49 ECAB 161 (1997).

¹² *Christine C. Burgess*, 43 ECAB 449 (1992).

a claimant to report earnings for the previous 15 months from any employer, self-employment or a business enterprise in which he or she worked. The forms further emphasize that severe penalties may be applied for failure to report all work activities thoroughly and completely.

ANALYSIS -- ISSUE 1

The Board finds that appellant forfeited his right to compensation benefits for the period May 20, 2002 to December 3, 2006 because he knowingly omitted earnings. For purposes of this appeal, it is sufficient that the District Court found him guilty of one count of mail fraud under 18 U.S.C. § 1341 by mailing a CA-1032 form to the Office on April 21, 2005 containing false and fraudulent representations in an attempt to defraud the government in obtaining workers' compensation disability payments. This satisfies the requirements of section 8106(b)(2) of the Act and establishes that appellant knowingly omitted work activities up to that date.¹³ The record also contains a 1032 form signed by him on March 13, 2006, covering the prior 15 months in which he reported no earnings or employment activity yet performed work activity for Thompson Welding. While appellant did not plead guilty to falsifying forms after April 21, 2005, the language on the forms is clear and unambiguous in requiring that he report all earnings, including such activities as keeping books and records or managing and/or overseeing a business of any kind, including a family business and specifically notes that unpaid duties must also be reported and an appropriate rate of pay shown for the activity. Although it is unclear from the record whether he received remuneration for his work at Thompson Welding, Office regulations define earnings as a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration.¹⁴ The record supports that appellant took an active role in the operation of Thompson Welding and was obligated to report as earnings the amount that would have been paid to a person doing the work up to December 2, 2006.¹⁵ His signature on the CA-1032 form dated March 13, 2006 certified that all the statements made in response to questions on the form were true, complete and correct to the best of his knowledge and belief. The Board finds that appellant's failure to fully report his work activities is found to be a knowing omission by him.¹⁶ Accordingly, appellant forfeited his right to compensation for the period April 21, 2005 to March 13, 2006.

Regarding the period from March 14 to December 3, 2006, section 8106(b)(1) of the Act provides that an employee who fails to make an affidavit or report when required forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.¹⁷ The record in this case indicates that, with the appropriate cover letter, on December 14, 2006 the Office requested that appellant complete a CA-1032 form covering the prior 15 months. By letter dated December 18, 2006, appellant informed the Office that as he had elected disability retirement on December 4, 2006, he did not wish to deal with paperwork

¹³ 5 U.S.C. § 8106(b)(2); *Paul D. Borquez*, 54 ECAB 400 (2003).

¹⁴ 20 C.F.R. § 10.5(g).

¹⁵ *J.S.*, 58 ECAB 515 (2007).

¹⁶ *Albert A. Garcia*, 54 ECAB 206 (2002).

¹⁷ 5 U.S.C. § 8106(b); *see F.C.*, *supra* note 9.

anymore and did not submit a completed CA-1032 form. As he failed to make an affidavit or report when required, under the terms of section 8106(b)(1) of the Act, he forfeited his right to compensation for the period covered by the form or up to December 3, 2006.¹⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8148 of the Act provides that any individual convicted of a violation of 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of any benefit under the Act, shall forfeit, as of the date of such conviction, any entitlement to any benefit such individual would otherwise be entitled to under the Act for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129 of the Act.¹⁹

Office regulations provide that, when a beneficiary either pleads guilty to or is found guilty on either federal or state criminal charges of defrauding the Federal Government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial.²⁰

ANALYSIS -- ISSUE 2

Office procedures provide that, before any action is taken to terminate or suspend compensation under section 8148, the file must contain a copy of the indictment or information; a copy of the plea agreement, if any; a copy of the document containing the guilty verdict; and/or a copy of the court's docket sheet. The case record at hand is complete with such documents and demonstrates that, in the U.S. District Court for the Eastern District of Texas, appellant entered a guilty plea for mail fraud in violation of 18 U.S.C. § 1341 on May 18, 2009. By entering the guilty plea, appellant acknowledged that he mailed a CA-1032 form to the Office on April 21, 2005 in an attempt to fraudulently obtain federal workers' compensation. As noted, section 8148 of the Act provides that any individual convicted of a violation of any federal or state criminal statute relating to fraud in the application for or receipt of any benefit under the Act, shall forfeit, as of the date of such conviction, any entitlement to any benefit such individual would otherwise be entitled to under the Act. Under section 8148 of the Act, appellant forfeited his entitlement to those benefits he would otherwise be entitled under the Act for any injury occurring on or before the date of such conviction. The Board therefore finds that he forfeited the right to compensation, effective May 18, 2009, the date of his conviction.

As appellant forfeited the right to compensation effective May 18, 2009, as found by the Office's July 15, 2009 decision, he would not be entitled to further schedule award compensation.

¹⁸ *Cecil S. Ortagus, Jr.*, 38 ECAB 141 (1986).

¹⁹ 5 U.S.C. § 8148(a); *see F.C.*, *supra* note 9.

²⁰ 20 C.F.R. § 10.17; *J.C.*, 59 ECAB ____ (Docket No. 07-1616, issued November 19, 2007).

CONCLUSION

The Board finds that the Office properly determined that appellant forfeited his right to compensation benefits for the period May 20, 2002 to December 3, 2006 and forfeited his right to receive further compensation benefits effective May 18, 2009.²¹

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 15 and June 24, 2009 are affirmed.

Issued: August 6, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

²¹ The Board notes that, subsequent to the appeal to the Board in the instant case, by decision dated November 19, 2009 an Office hearing representative affirmed the June 24, 2009 decision and finalized the preliminary finding that appellant received an overpayment in compensation in the amount of \$134,589.12. An Office decision, issued while the Board has jurisdiction over the matter in dispute, is null and void. *Lawrence Sherman*, 55 ECAB 359 (2004). As the underlying issue in this case is forfeiture, which constitutes the underlying basis of whether an overpayment was created, the November 19, 2009 decision of the Office as premature and is null and void.